IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 6TH JUNE 2007 / 16TH JYAISHTA 1929

Crl.MC.No. 5252 of 2003()

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PETITIONER: ACCUSED:

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1. ULLAS, S/O. VASUDEVAN PILLAI,
   KAITHAPUZHA HOUSE, MAYYANAD P.O.,
   KOLLAM. (ACCUSED NO.2).

2. SAJEESH, S/O. SARASAN,
   KUTTIPAD PALLITHODI, MAYYANAD P.O.,
   KOLLAM. (ACCUSED NO.3).

BY ADV. SRI.C.RAJENDRAN

RESPONDENTS: COMPLAINANT:

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STATE OF KERALA, REPRESENTED BY
SUB INSPECTOR OF POLICE, KOLLAM TRAFFIC
POLICE STATION THROUGH THE PUBILC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 06/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**R.BASANT, J.**

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Crl.M.C.No.5252 of 2003

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Dated this the 6th day of June 2007

**O R D E R**

The petitioners are accused 2 and 3 in a prosecution which essentially arises from a traffic accident. Originally the case was registered against the first accused alone who is the driver of the vehicle. Petitioners are the conductor and the cleaner respectively of the same vehicle. The crux of the allegations is that the buses were engaged in a mad and insensible attempt to compete with each other and in the course of such attempt, the conductor of the other bus was killed having been crushed between the two vehicles. In the course of the investigation the section of offence has been altered and at present the petitioners are facing investigation under Section 304 I.P.C.

2. The learned counsel for the petitioner submits that there is absolutely no justification in altering the charge from Section 304(A) to 304 and for arraying the petitioners as co-accused along with the principal accused, that is the driver of the vehicle. The arraying of the petitioners as accused and the alteration of the section amounts to abuse of process of the court

and the same deserves to be quashed by invoking the powers under Section 482 Cr.P.C, submits the learned counsel for the petitioner.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that this case is pending even now because of the order of stay. The police may be permitted to complete the investigation. A fair and reasonable investigation shall be conducted. Only if allegations under Section 304 I.P.C are found to be sustainable against the petitioners, will the final report be filed against them. Investigation is at an advanced stage. At this stage, there may be no orders under Section 482 Cr.P.C impeding the investigation.

4. I have considered the submissions made and perused the records and I am satisfied that an extraordinary inherent jurisdiction under Section 482 Cr.P.C need not be invoked at this stage to interfere with the investigation which has made much progress. I shall scrupulously avoid any detailed reference to the facts of the case. Suffice it to say that I am satisfied that the police must be given an unfettered opportunity to complete the

investigation and file an appropriate final report. I have no reason to assume that the police shall not conduct a proper and fair investigation in the facts and circumstances of this case.

5. The learned counsel for the petitioner finally submits that appropriate directions may be issued in this Criminal Miscellaneous Case invoking the powers under Section 438 Cr.P.C to avoid any undeserved hardship and inconvenience to the petitioners. I find the said request to be reasonable. The larger relief of quashing the investigation is prayed for but that need not fetter the powers of this court under Section 438 Cr.P.C to issue appropriate directions.

6. In the result, this petition is dismissed but the petitioners are granted the lesser relief of a direction under Section 438 Cr.P.C. The petitioners shall appear before the learned Magistrate having jurisdiction on or before 15/6/2007. They shall be released on bail on their executing a bond for Rs.25,000/- each with two solvent sureties. They shall make themselves available for interrogation before the investigating officer between 10 a.m and 4 p.m on 16/06/2007, 17/06/2007 and 18/06/2007. Thereafter, they shall appear before the

investigating officer as and when directed by the investigating officer in writing to do so.

7. If the petitioners do not appear before the learned Magistrate as directed, these directions shall lapse. If they were arrested prior to 15/6/2007, they shall be released on their executing a bond for Rs.25,000/- each with two solvent sureties undertaking to appear before the Magistrate on 15/6/2007. Needless to say, the dismissal of this petition will not in any way fetter the rights of the petitioner to raise all necessary and relevant contentions at later stages before appropriate authorities. I have only chosen to hold that the investigation need not be interfered with invoking the jurisdiction under Section 482 Cr.P.C.

**(R.BASANT, JUDGE)**

jsr

// True Copy// PA to Judge

**R.BASANT, J.**

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007